

OGC HAS REVIEWED.

Resonance

HOLDE BROS. V. CHALKLEY, 184 Va. 553

RICHMOND

Holde Brothers, Incorporated v. Blanton Rolfe Chalkley, An Infant,
Who Sues by His Next Friend, Bernard E. Chalkley

and

George L. Feitig v. Blanton Rolfe Chalkley, An Infant, Who Sues
by His Next Friend, Bernard E. Chalkley.

November 19, 1945.

Record Nos. 2963-2964

Present, Campbell, C.J., and Hudgins, Gregory, Browning, Eggleston
and Spratley, JJ.

"Whether a person engaged by an employee to assist him in the performance of the duties of the employer is also an employee depends upon whether the principal employer has knowledge of such employment and consents thereto. This knowledge may be actual or imputed. The consent may be express or implied.

"Where one, employed to operate a truck for delivery of bakery products, hired a helper with the employer's knowledge, the helper was an employee of the principal employer.

"The ordinary test to determine whether one is an employee or an independent contractor is to ascertain who has the power to control and direct the servants in the performance of their work.

"In the instant case, an action by an infant 11 years old to recover damages for personal injuries, plaintiff alleged that he was in the employ of the defendant servant of the defendant baking company and was riding in an automobile truck owned by the defendant baking company and operated by its servant when he was injured due to the negligence of the defendant servant. Defendant baking company contended that the evidence for plaintiff showed as a matter of law that plaintiff was an employee of the baking company and that, for that reason, judgment for the plaintiff should be reversed, the verdict set aside and the case dismissed, leaving the plaintiff the right to pursue his remedies before the Industrial Commission. The officers and other employees of the defendant baking company denied actual knowledge of the employment, but plaintiff's evidence was to the effect that he and 10 or 15 other boys gathered at the loading shed of defendant as early as 5:00 A.M. in the winter for the purpose of securing employment; that they secured the employment that early in the morning, immediately began to load the trucks and left riding on the trucks; and that this was done in the presence of the foreman and supervisors of the defendant. Plaintiff

contended that his evidence established the fact that the defendant "suffered and permitted" plaintiff to act as helper to its servant, but that this was not sufficient to show that defendant had knowledge of or ratified plaintiff's employment by the servant.

"That since no reasonable person, adult or infant, would make a practice of working unless he expected to be paid therefor, knowledge of the fact that these boys were receiving compensation for work performed for the defendant baking company was imputable to the baking company, and consent to the employment was implied from the silence of the officers in charge of the work.

"That while no authority was expressly given the servant to hire plaintiff, the conduct of the baking company, after he had been hired, made the servant who hired plaintiff the agent of defendant by estoppel."

LARSON V. INDEPENDENT SCHOOL DIST. NO. 11J.
53 Idaho 49 (1933)

M. E. LARSON, Widower, and DAVID W. LARSON, Minor Son,
Appellants, v. INDEPENDENT SCHOOL DISTRICT No. 11J
OF KING HILL, IDAHO, Employer, and STATE INSURANCE
FUND, Surety, Respondents.

"In determining whether person is employee within compensation acts, compensation for services may be in other things than money.

"Under a well-established common-law rule, person who at employee's request assists in doing employee's work furthering employer's business with employer's acquiescence becomes in effect "employee."

"In determining who is employee or workman under compensation acts, common-law definition of employee or workman is applicable.

"Person hired by employee to assist him with employer's knowledge is deemed "employee"; exercise of control being unnecessary if right of control exists.

"School janitor's wife, who, with knowledge of school board members, assisted janitor, whom members had told that wife's assistance would be necessary, HELD "employee" within Compensation Act (I. C. A. 1932, secs. 43-901 et seq., 43-1106, 43-1118)."